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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

No. 563.

MANUEL CEDILLO ET AL.,
Petitioners,

vs.

STANDARD OIL COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Manuel Cedillo, Alberto Sanchez, and thirty-six others present this, their Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit, and to such end respectfully show:

A.

OPINION BELOW.

The opinion of the Court of Appeals is found at page 302 of the record. The District Court wrote no opinion.

B.

STATEMENT OF JURISDICTION.

The judgment sought to be reviewed is dated and was entered May 26, 1961 (R. 302). Petition for Rehearing was filed on June 14, 1961 (R. 309), and was overruled on September 11, 1961 (R. 315).

The jurisdiction of this Court is invoked under Section 1254 (1) of the Judicial Code, 28 U.S.C.A., Section 1254 (1).

C.

QUESTIONS PRESENTED.

The questions presented here are:

A. Whether or not Petitioners, unskilled workers, who were employed for periods of two to ten years in the same class of maintenance work required in the usual operation of the refinery of Respondent Standard Oil Company, under the direction, control and supervision of Respondent, were employees of Respondent and under the Labor Management Act.

B. Whether or not employees who are not members of the collective bargaining union are entitled to the benefits and provisions of the collective bargaining contract.

C. Whether or not employees may waive this right to be classed as employees of a company subject to Labor Management Act.

D.

STATUTES INVOLVED.

The Statute involved here is Section 151, Title 29, U.S. C.A., set out in appendix, page A10, and Section 152, Subsection (3), Title 29, U.S.C.A., set out in appendix, page A12.

E.

STATEMENT OF CASE.

In this case, Manuel Cedillo, Alberto Sanchez and thirty-six others filed suit claiming to be employees of Standard Oil Company of Texas against the Standard Oil Company for back wages and benefits, equivalent to those paid employees of the Company under a collective bargaining agreement under the National Labor Relations Act. alleging employment of a permanent nature by Petitioners for periods of time extending for each employee from two to ten years, in regular work, required in the ordinary operation of Respondent's Standard Oil Company of Texas refinery operation in El Paso, alleging they were hired by Respondent Standard Oil and under the direction and control of Standard Oil in the performance of its work and that they are subject to the National Labor Relations Act and National Labor Management Act and as such were employees of the Respondent Standard Oil and entitled to the same wages and benefits as its other employees.

Respondent Standard Oil (R. 1-7) denied that Petitioners were its employees and alleged that they were employees of an independent contractor (R. 9), and further

alleged that they were not members of the Union negotiating the collective bargaining agreement and therefore were not entitled to its benefits (R. 9-10) and that they failed to follow the grievance procedure provided in the collective bargaining agreement (R. 8).

The case was tried before the Court without a jury and the Court entered its judgment, finding that Petitioners were not employees of Respondent Standard Oil Company but were employees of an independent contractor (R. 280-281).

Circuit Court of Appeals entered this judgment, affirming the Trial Court, holding that Petitioners were not subject to the National Labor Relations Act and the National Labor Management Act and that they were not members of the exclusive bargaining union and therefore not entitled to its benefits and that the National Labor Relations Act and the Labor Management Act were inappropriate and inapplicable to the case and that Petitioners were not employees of the Standard Oil Company (R. 302-307). Petition for rehearing was filed (R. 309-314) on June 14, 1961, which was denied on September 11, 1961.

F.

BASIS FOR JURISDICTION.

REASONS FOR ALLOWANCE OF WRIT.

The Circuit Court based its opinion on the erroneous conclusion that the status of Petitioners was not subject to or determined by the Labor Management Act even though admittedly Respondent is subject to the act in its relation to its employees. The decision of the Circuit Court curtails and limits the application of the Labor Management

Act, and is contrary to this Court's decisions construing the meaning of "employees" under the act.[1]

The Petitioners in this case are all illiterate Mexican common laborers, untrained, who were doing work requiring no skill or experience, of a permanent nature in the ordinary operation of Respondent's refinery, for ten years, who were excluded from the Union with bargaining rights (which Union was composed of Anglo Americans), who were hired by Respondent and under the direction and control of Respondent in the performance of its work, and who were, as a matter of economic reality, dependent upon the business of Respondent to which they rendered their services for their livelihood.

The Respondent, in an attempt to avoid the consequences of the employer-employee relationship under the Labor Management Act, and the collective bargaining agreement negotiated thereunder, attempted to make them employees of an independent contractor, who was nothing more than a glorified bookkeeper, keeping the pavroll, personnel and deduction records for Social Security and Workmen's Compensation Insurance.

The Labor Management Act cannot be evaded and its purposes subverted by subterfuge. If the contract herein relied on to create the relationship of "independent contractor" is upheld, the Labor Management Act will be nullified. This Court has held that subterfuge cannot be used to evade the act, that economic reality determines the relation under the Act and that neither the employee alone, nor with the employer, may waive or destroy the rights created under the Act.

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1. *N.L.R.B.* v. *E. C. Atkinson Co.*, 331 U.S. 398; *U. S.* v. *Silk*, 331 U.S. 704; *J. I. Case Co.* v. *N.L.R.B.*, 321 U.S. 332; *Rutherford Food Corp.* v. *McComb*, 331 U.S. 722; *N.L.R.B.* v. *Hearst Publications*, 322 U.S. 111.

As stated in *Rutherford Food Corp.* v. *McComb*, 331 U.S. 722.

> "Where the work done, in its essence, follows the usual path of an employee, putting on an 'independent contractor' label does not take the worker from the protection of the Act."

The Supreme Court has repeatedly held that an employee was one whose work followed the usual path of an employee and included those who, as a matter of economic reality, were dependent upon the business to which they rendered service.

In the case of *J. I. Case Company* v. *N.L.R.B.*, 321 U.S. 332, the Court at great length sets forth the effect of the collective bargaining agreement and the relation of the individual employee to the agreement. The Court states:

> "After the collective trade agreement is made, the individuals who shall benefit by it are identified by individual hirings. The employer, except as restricted by the collective agreement itself and except that he must engage in no unfair labor practice or discrimination, is free to select those he will employ or discharge. But the terms of the employment already have been traded out. There is little left to individual agreement except the act of hiring. This hiring may be by writing or by word of mouth or may be implied from conduct. In the sense of contracts of hiring, individual contracts between the employer and employee are not forbidden, but indeed are necessitated by the collective bargaining procedure.
>
> But, However engaged, an employee becomes entitled by virtue of the Labor Relations Act somewhat as a third party beneficiary to all benefits of the collective trade agreement, even if on his own he would yield to less favorable terms. The individual hiring contract is subsidiary to the terms of the trade agreement and may not waive any of its benefits."

And the Court further states:

> "Individual contracts, no matter what the circumstances that justify their execution or what their terms, may not be availed of to defeat or delay the procedures prescribed by the National Labor Relations Act looking to collective bargaining, nor to exclude the contracting employee from a duly ascertained bargaining unit; nor may they be used to forestall bargaining or to limit or condition the terms of the collective agreement. 'The Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices.' National Licorice Co. v. National Labor Relations Bd., 309 U.S. 350, 364, 84 L. Ed. 799, 810, 60 S. Ct. 569. Where-ever private contracts conflict with its functions, they obviously must yield or the Act would be reduced to a futility.
>
> "It is equally clear since the collective trade agreement is to serve the purpose contemplated by the Act, the individual contract cannot be effective as a waiver of any benefit to which the employee otherwise would be entitled under the trade agreement."

The facts on which Petitioners base this claim are undisputed. The question involved is not whether Respondent can have the services performed by Petitioners, done so through independent contractor—although, by virtue of the nature of the works we do not believe it could relieve itself through independent contractor of direction and control and the obligations fixed by law—but whether Respondent did give up its control and direction of Petitioners through its contract and its conduct to an independent contractor. The contract is set out (R. 98-106) "Standard Oil Company to furnish supervision". All work orders under the contract provided "as instructed by" Respondent's foreman (R. 266-7).

The testimony of Petitioners was undisputed and unchallenged as to their employment, supervision, direction and control by Respondent (R. 15-137).

CONCLUSION.

Wherefore, the Petitioners pray the Supreme Court to issue a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

ERNEST GUINN,
400 Bassett Tower,
El Paso, Texas,

By .....

CERTIFICATION.

Ernest Guinn, Counsel preparing the foregoing Petition for Writ of Certiorari, hereby certifies that the same is made in good faith; that in his opinion there are good grounds for same, and that such petition is not filed for delay.

Ernest Guinn, further certifies that two copies of this Petition for Writ of Certiorari have been mailed with first class postage prepaid addressed to Messrs. Scott, Hulse, Marshall & Feuille, 1100 First National Building, El Paso, Texas, and copy of the printed record delivered to them.

.....,
ERNEST GUINN.